UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/38/Add.1
17 May 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Sudan

Addendum

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 3	3
II.	OBLIGATIONS OF THE GOVERNMENT OF THE SUDAN UNDER INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW	4 - 8	3
III.	POLITICAL AND SOCIAL CONTEXT IN WHICH THE MISSION TOOK PLACE	9 - 16	4
	A. The new Constitution and law on political parties	9	4
	B. The peace process	10 - 13	4
	C. The humanitarian crisis	14	5
	D. The social and economic situation	15	5
	E. The complex international environment	16	5
IV.	PROGRAMME OF ACTIVITIES OF THE MISSION	17 - 21	6

GE.99-13437 (E)

CONTENTS (continued)

		Paragraphs	Page
V.	MAIN ISSUES ADDRESSED ON THE MISSION	22 - 151	6
	A. Constitution/transition to democracy	22 - 40	6
	B. Respect of human rights and humanitarian law in the conflict	41 - 89	11
	C. Women's rights	90 - 96	21
	D. Rights of the child	97 - 107	22
	E. Other reported violations of human rights	108 - 151	24
VI.	CONCLUSIONS	152 - 170	33
	A. Conclusions with regard to the Constitution and the transition to democracy	154 - 158	33
	B. Respect of human rights and humanitarian law in the conflict	159 - 162	35
	C. The human rights situation in general	163	36
	D. Slavery	164 - 167	37
	E. Field presence	168 - 170	37
VII.	RECOMMENDATIONS	171 - 178	38
	A. The Constitution and the transition to democracy	172 - 173	38
	B. The respect of human rights and humanitarian law during the armed conflict	174 - 175	39
	C. Prevention of torture	176 - 177	41
	D. A human rights field presence	178	41

I. INTRODUCTION

1. On 2 January 1999, the Ministry of External Relations of the Government of the Sudan addressed a letter to the Special Rapporteur inviting him to visit the country, expressing firm commitment to constructive assistance and cooperation during the visit, as well as confidence that by building on transparency, objectivity and neutrality the Government of the Sudan and the Special Rapporteur would accomplish the tasks assigned by the Commission on Human Rights. In his reply of 27 January, the Special Rapporteur confirmed his intention to visit the country and proposed the following objectives for the mission: (i) to examine with the authorities the new Constitution and any new legislation adopted; (ii) to look into the causes and implications of the serious humanitarian crisis occurring especially in the southern part of the Republic of the Sudan; and (iii) to review with the authorities progress in the implementation of the provisions of Commission on Human Rights resolution 1998/67.

2. The visit, initially scheduled for 2 February 1999, had to be postponed owing to technical problems and problems related to the issuance of visas to a United Nations staff member who was to accompany the Special Rapporteur. The visit eventually took place from 13 to 24 February 1999. The Special Rapporteur concluded his mission with a brief visit to Kenya.

3. The Special Rapporteur acknowledges the excellent cooperation he received from the Government of the Sudan throughout his visit. In particular, he wishes to thank the authorities for facilitating his passage to the rebel-held territories in the south and for giving him direct access to detainees and places of detention. Particular thanks go to the Rapporteur of the Advisory Council for Human Rights, who was instrumental in organizing the programme, as well as to the United Nations Development Programme (UNDP) and Operation Lifeline Sudan (OLS) in both the Sudan and Kenya.

II. OBLIGATIONS OF THE GOVERNMENT OF THE SUDAN UNDER INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

4. As a Member State of the United Nations, the Sudan is bound by the Charter of the United Nations. Further, it is obliged to respect the human rights and fundamental freedoms of all persons within its territory, as set out inter alia in the following instruments to which the Sudan has become a party: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Slavery Convention, as amended; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention relating to the Status of Refugees and the Additional Protocol thereto.

5. As a member of the International Labour Organization, the Sudan has ratified its Conventions concerning Forced Labour (No. 29), the Abolition of Forced Labour (No. 105), the Right to Organise and Collective Bargaining (No. 98), Employment Policy (No. 122) and Discrimination (Employment and Occupation) (No. 111).

6. On 23 September 1957, the Sudan became a party to the four Geneva Conventions of 1949, which set out humanitarian rules for armed conflicts.

7. Further, it is to be noted that the Sudan has signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Although signature has not yet been followed by ratification, the Sudan has, by signing, shown the intention to accept the obligations under this Convention and, under customary international law, as reflected in the Vienna Convention on the Law of Treaties, is obligated not to do anything which would defeat the object and purpose of the Convention against Torture, pending a decision on ratification.

8. In addition to the obligations arising from conventional international law, the Sudan is also bound to respect the standards of international customary law.

III. POLITICAL AND SOCIAL CONTEXT IN WHICH THE MISSION TOOK PLACE

A. The new Constitution and law on political parties

9. Since the last session of the Commission on Human Rights, there have been major changes in the Sudan regarding political and civil rights. In April 1998 the National Assembly adopted a new Constitution, subsequently approved by a national referendum. This new Constitution contains a bill of rights, thereby providing greater protection to the human rights of Sudanese citizens. Further, in January 1999, a new Law on Political Parties was enacted, allowing for the formation of political parties. During the course of the mission, the Special Rapporteur was informed that over 30 parties had been registered and may participate in the forthcoming elections. It must be noted, however, that traditional northern Sudanese parties, in particular the Umma Party and the Democratic Unionist Party (DUP), have not registered, nor has the Communist Party been allowed to register.

B. The peace process

10. The 1994 Declaration of Principles (DOP) agreed to by the Government of the Sudan, the Sudan People's Liberation Movement (SPLM) and the Sudan People's Liberation Army (SPLA) - united under the auspices of the Inter-Governmental Authority on Development (IGAD) provides the basic framework for a peaceful solution of the conflict in the Sudan. The most important principle set forth in the DOP is the right of self-determination for the people of southern Sudan.

11. Beginning in 1995, however, the Government of the Sudan began to focus on a political strategy of "peace from within". In April 1996, the Government's Supreme Council for Peace put forward a political charter, a non-binding document containing a general framework for a political solution of the civil conflict in the Sudan. A year later, on 21 April 1997, a peace agreement between the Government of the Sudan and six splinter rebel groups was signed in Khartoum, in which it was emphasized that the general principles of the Political Charter should guide the Peace Agreement. A common feature with the DOP is acceptance of the right of self-determination. The major shortcoming of the Peace Agreement, of course, is the absence of the SPLA.

12. In July 1997, shortly after the Khartoum Peace Agreement was signed, the Government of the Sudan, facing a united offensive by the National Democratic Alliance forces in the south and the east, once again accepted the DOP as the basis for IGAD-sponsored peace talks. Two sets of talks took place in 1998, in Nairobi in May and in Addis Ababa in August, but unfortunately no decisive progress was made. However, the main outcome of the talks was a request by the parties that the Technical Committee for Humanitarian Affairs (TCHA) be reactivated; it met in Rome in November 1998.

13. The failure of the IGAD peace talks to achieve progress and the apparent willingness of all parties to the conflict to accept the status quo have resulted in the continuation of low-intensity conflict in the south, with no end in sight.

C. The humanitarian crisis

14. Following the human catastrophe of 1988, in which hundreds of thousands died, it is estimated that in 1998 2.6 million Sudanese remained at risk of starvation. As a result of the war, the Sudan has the largest population of internally displaced persons (IDPs) in the world and one of the largest populations of refugees in the world. The Sudan continues to be dependent almost exclusively upon humanitarian assistance from the international community.

D. The social and economic situation

15. The UNDP Human Development Report 1998 portrays the bleak existence of the average Sudanese citizen. However, cooperation does exist with the International Monetary Fund with a view to economic recovery. Mention should also be made of the potential boost to the Sudanese economy from oil exploitation in southern Sudan. This will have serious ramifications for the peace process. Indeed, the conflict between Paulino Matiep and Riek Machar that has erupted during the past year is largely driven by their desire to control the territory in which the oilfields are located.

E. The complex international environment

16. The conflict between Eritrea and Ethiopia has affected the IGAD peace process. It has also been seriously hampered by the fact that the Sudan has tense relations with some of its neighbours. Some of them have been accused by the Sudan of having committed acts of aggression against its territory and of supporting the SPLA. The same charges have been levelled by Uganda and Eritrea against the Sudan. While relations with Egypt have improved since 1995, when the Sudan security was accused of playing a role in the assassination attempt against President Mubarak, tension still exists between the two neighbours. The Sudan's bilateral relations have been further complicated following the Al Shifa bombing in 1998 by the United States of America. Currently both the United States and the United Kingdom of Great Britain and Northern Ireland have withdrawn their diplomatic staff from Khartoum.

IV. PROGRAMME OF ACTIVITIES OF THE MISSION

17. During his visit to the Sudan, the Special Rapporteur held meetings in Khartoum with the following authorities: the Minister for Foreign Affairs, Mr. Mustapha Osman; the Minister of Justice, Mr. Ali Mohamed Osman Yassin; the Minister of Transport, Dr. Lam Akol; the State Minister for External Relations, Mr. Ali Abdel Rahman Nimeri; the State Minister and Chairperson of the National Council for Child Welfare, Ms. Mariam Sir El Khatim; the Registrar of Political Associations, Mr. M.A. Salim; the State Minister for State Engineering, Dr. Sharaf El Den Banaga; the Chairman of the National Press Council; the Coordinator of National Service; the Chairman of the National Elections Board; the Rapporteur of the Advisory Council for Human Rights; members of the Women's Union; members of the Sudanese Bar Association and the Sudanese Jurist Union. In Khartoum, the Special Rapporteur also met representatives of domestic and international NGOs, heads of United Nations agencies and representatives of the diplomatic community. The Special Rapporteur received direct testimony from individuals concerning alleged violations of human rights.

18. In Khartoum, the Special Rapporteur was invited to visit the Al Shifa factory, on 16 February 1999. He was provided with a document by the authorities claiming that the destruction of the plant constituted a serious attack on the ability of the State to fulfil its obligations with regard to the right to health and to development.

19. The Special Rapporteur also visited Kober Prison in Khartoum and Omdurman Women's Prison, camps for IDPs in Khartoum, Wau and Juba, as well as the prison in Juba.

20. On 18 and 19 February 1999, the Special Rapporteur visited Wau, where he met the Governor as well as United Nations and NGO personnel operating in the area. On 21 February, the Special Rapporteur visited Juba, where he met the acting Governor as well as United Nations and NGO personnel operating in the area. On 23 and 24 February, the Special Rapporteur was in Thiet and Medar, Tonj county, in the south of the Sudan. There he met the organizers of a Dinka Nuer chiefs' conference on peace and also had the opportunity to talk to OLS personnel.

21. From 25 to 27 Februa y 1999, the Special Rapporteur travelled to Nairobi, Kenya. In Nairobi, he met with a representative of the Ministry of Foreign Affairs and with the Secretary for Foreign Affairs of the SPLM, Mr. Deng Alor, the SPLM/A Representative to East Africa and the Horn of Africa, Dr. Justin Yaac Arop, and SPLM Secretary for Humanitarian Affairs, Mr. Kosti Manibe. The Special Rapporteur also met with representatives of United Nations agencies and NGOs, including OLS partners, southern Sudan civil society groups and Kenyan personalities involved in the Sudan peace process.

V. MAIN ISSUES ADDRESSED ON THE MISSION

A. Constitution/transition to democracy

22. In April 1998, a new Constitution was adopted by the National Assembly. A national referendum was then held and the electoral commission announced

a 96 per cent vote in favour of the Constitution in a national turnout of 91.9 per cent. In the course of his visit, the Special Rapporteur had the opportunity to discuss the new Constitution in several meetings with both government and non-government actors. In particular, the Special Rapporteur wishes to highlight the two working sessions he had with the Minister of Justice and an open air meeting organized by a prominent lawyer at which a number of opposition figures were present.

23. The Constitution contains innovative provisions, such as the newly acquired right of Sudanese women to pass their nationality on to their children regardless of the nationality of the father. It has also prompted the need to adjust existing legislation and to enact new laws to conform with its principles. According to some observers, the Constitution has sparked new energy in the public debate and created an opportunity for renewal that should not be missed. On the other hand, for the political opposition, it constitutes another instrument to maintain the power of the official party.

24. The Special Rapporteur was informed in meetings with government officials that the Constitution can be amended and is open to interpretation. In this context, the Special Rapporteur would submit the following observations.

1. Legal analysis: sources of legislation

25. Part IV, chapter 1 of the Constitution delineates the general principles of the legislative power. Article 55 enshrines the sources of legislation as follows: "Islamic law and the consensus of the nation, by referendum, Constitution and custom". No mention is made therein, nor in other constitutional provisions, of the status of international human rights treaties ratified by the Sudan, the only reference to which is to be found in article 73 (d), which states that it is a function of the National Assembly to "pass bills ratifying international conventions and agreements". As already expressed in meetings with the Government, the Special Rapporteur would welcome a clarification on this matter, which he considers key for the enforcement of international human rights standards in the Sudan.

2. Legal analysis: protection of individual rights

26. Part II, Chapter 1 of the Constitution sets forth freedoms, sanctities and rights of the people. This chapter provides for most of the rights set forth in the International Covenant on Civil and Political Rights, to which the Sudan is a party. Rights omitted from the Constitution include prohibition of detention for debt, prohibition of propaganda for war and advocacy of hatred, and freedom of assembly. The Special Rapporteur would encourage the Government to amend the Constitution to include these particular rights.

27. It was brought to the Special Rapporteur's attention that many provisions in this section of the Constitution include clauses that may potentially limit the right guaranteed. Specifically, article 20 (freedom and sanctity of life), article 23 (freedom and right of movement), article 24 (freedom of creed and worship), article 25 (freedom of thought and expression), article 26 (freedom of association and organization), article 29 (inviolability of communication and privacy) and article 31 (right and

sanctity in litigation) guarantee the respective rights without restriction "save in accordance with the law". Interlocutors outside of the Government noted that these laws are yet to be enacted and, therefore, concern was expressed that future legislation may unduly restrict the rights guaranteed by the Constitution. The Special Rapporteur would encourage the Government to take the necessary steps to ensure that all future legislation enacted concerning these rights remains consistent with the obligations of the Sudan under international human rights treaties to which it is a party.

28. The Special Rapporteur is also concerned that several provisions of the Constitution are vague. Article 30, providing for immunity from detention, should be developed further and incorporate elements of article 9 of the International Covenant on Civil and Political Rights, in particular those to the effect that no one shall be subject to arbitrary detention and that everyone has the right to be informed of the reasons for his or her arrest at the time of arrest and promptly informed of any charges against him or her. Moreover, the right to be brought before a judge or other officer authorized by law to exercise judicial power to determine the legality of the detention, and the right to benefit from a trial without undue delay, should also be spelt out. Further, persons who have become the victims of unlawful arrest or detention shall have an enforceable right to compensation. Indeed, in the course of his visit, the Special Rapporteur noted that arbitrary arrest and detention, especially by the security forces, are a major problem in the Sudan.

29. The Special Rapporteur is also of the opinion that article 32 of the Constitution guaranteeing the right of innocence and defence should be more articulated and encompass guarantees provided for in international standards. Once again, the authorities should seek guidance from the International Covenant on Civil and Political Rights, specifically article 14.

30. The Special Rapporteur was informed that the initial draft constitution tabled before the National Assembly provided, in article 41, the right of assembly and association. This was replaced by article 26, section 1 of which provides: "Citizens shall have the right of association and organization for cultural, social, economic, professional or trade union purposes without restriction save in accordance with the law." In the Arabic version the term Tawali is used for political association. The term Tawali is extremely ambiguous; at no point is the term defined in either the Constitution or the newly enacted legislation. This has created some concern in certain quarters of Sudanese society about the intentions of the Government and how much pluralism will in fact be accepted.

31. The Law on the Regulation of Tawali came into force on 1 January 1999. Section 3 of this law reads, "Every association in political movement must adhere to ideology of Al-Ingaz (Salvation)." Al-Ingaz is the term the regime uses for itself. Thus, critics note, this provision requires that all political organizations must agree to adhere to the ideology of the ruling party in order to be registered. Section 3 also provides, "Every association should not discriminate against members because of race, colour, heritage, sex, class or political residence." Notably, the law makes no mention of religion or language. Therefore, if misapplied the law could allow a political association to discriminate on the basis of religion or language.

The Special Rapporteur was informed that already some 33 political parties have registered under the new system. He welcomes this trend and will continue to gather information on the implementation of this law. It must be noted, however, that traditional northern Sudanese parties, in particular the Umma Party and the DUP, have not registered, nor has the Communist Party been allowed to register. The Special Rapporteur is of the opinion that article 26 of the Constitution should reflect the guarantees set forth in article 25 of the International Covenant on Civil and Political Rights, namely the right of every citizen and the opportunity without discrimination, to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage, held by secret ballot, and to have access to public service, on general terms of equality.

32. Article 21 of the Constitution provides for the right to equality. However, as it presently stands, the Constitution seems to have taken a minimalist approach, as it forbids discrimination "only by reason of race, sex or religious creed". The Special Rapporteur invites the legislator to consider extending the non-discrimination clause to all categories envisaged in international standards (race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status), and apply it uniformly throughout the Sudanese body of laws.

33. Although the Constitution sets out freedom of creed and religion quite strongly in article 24, the most serious criticism of the Constitution is that it is perceived by many as establishing a theocratic State. This would be unacceptable to a large segment of society and would be a serious impediment to reaching a settlement of the ongoing conflict in the south, since one demand of the SPLA is the establishment of a secular State.

3. Separation of powers; independence of the judiciary

34. An independent and impartial judiciary is a prerequisite for respect for the rule of law and protection of individual rights against abuse of power on the part of the executive or legislative branches of government. Article 101 (1) provides that "judges are independent in the performance of their duties and have full judicial competence with respect to their functions; and they shall not be influenced in their judgments". However, the Constitution also assigns pervasive powers to the President, who, with the consent of the National Assembly can appoint members of the Constitutional Court, the Chief Justice and his deputies, as well as lower court judges, upon the recommendation of the Supreme Council of the Judiciary. It is the opinion of the Special Rapporteur that it would be preferable for the Supreme Council of the Judiciary to exercise control over the selection and appointment of all judges. The law regulating the Supreme Council should empower it to be a truly independent organ of self-government of the judiciary.

4. Review of existing legislation

35. The enactment of the Constitution has made necessary a review of all existing legislation to ensure its compliance with both the dictates and spirit of the Constitution. The Special Rapporteur was provided with a list of 15 acts that are being considered for review by the Constitutional Court. These laws regulate matters of a varied nature, ranging from land planning to

justice, from youth to citizenship. The Special Rapporteur acknowledges the endeavour of the Government of the Sudan and trusts that the process of revision will also take into account the international human rights obligations the Sudan is bound by. The Special Rapporteur notes that article 140 (5) of the Constitution states that "until the issue of new measures in accordance with the provisions of the Constitution, all laws shall continue" and that it fails to provide a time frame for the completion of the review process. It is the opinion of the Special Rapporteur that certain laws, particularly the emergency legislation, should be reviewed as a matter of absolute priority.

5. Emergency legislation

36. The Special Rapporteur was informed that the emergency legislation is no longer in force in the north of the Sudan, whereas it still applies in selected states in the south. An armed conflict may justify the enactment of a state of emergency. Nevertheless, the Special Rapporteur invites the Government of the Sudan to minimize the use of the state of emergency and recalls that article 4.3 of the International Covenant on Civil and Political Rights provides that State Parties to the Covenant "shall immediately inform the other State Parties ..., through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation". In the absence of such a communication, the Special Rapporteur considers the Government of the Sudan to be bound by the Covenant as a whole.

6. The 1994 National Security Act

37. Security forces appear to have the upper hand in public life in the Sudan. The Special Rapporteur received many comments suggesting that the security forces are above the law and that they are the real rulers in the country. According to some observers, the Sudan has all the traits of a police State. People are subjected to arbitrary arrest and detention at the hand of the various security forces, which have virtual impunity. The 1994 National Security Act and its amendments indeed provide a framework for impunity and lawlessness and falls far short of the standards provided for in the bill of rights enshrined in the 1998 Constitution, let alone international human rights standards. The Act grants security forces virtual immunity from prosecution and provides them with investigative powers that allow arbitrary arrest, incommunicado detention, lengthy detention without judicial review and arbitrary search. The National Security Act is included in the list of laws to be reviewed by the Constitutional Court. The Special Rapporteur requests that this law be dealt with immediately and in a manner consistent with the highest international standards.

7. Other security concerns

38. The Special Rapporteur regrets to find the Popular Forces, a form of legalized armed militia, enshrined in article 25 of the Constitution. Militias have historically played a destabilizing role in low intensity conflict in other regions of the world. Furthermore, other forms of security or policing forces, such as the public order police, accompanied by the

dictate of article 35 (2) of the Constitution that "The duties of a citizen shall be a general obligation observed by conscience and by a vigilant society", could pave the way to obscurantism and repression. In this connection, the Special Rapporteur received consistent information that the Government of the Sudan is providing arms and ammunition to paramilitary groups such as the Murahaleen which are commonly held responsible for gross violations of human rights and international humanitarian law.

B. Process under which the Constitution was drafted and adopted

39. The Special Rapporteur was informed that the process of drafting the Constitution was flawed. A national commission created for the purpose met for a period of four months to prepare the draft to be submitted to the National Assembly. This commission was composed of respected lawyers and scholars. The national commission presented the draft to the National Assembly, which then debated its merits. However, the draft was withdrawn on the final day of debate and replaced by a draft transmitted by the President's office. There was widespread criticism in the media of this event and several members of the National Assembly protested by abstaining or voting against the draft submitted.

40. There is also widespread doubt about the reported results of the referendum. Although leaders of banned political parties boycotted the referendum, and observers noted a low turnout, the Government declared that there was a turnout of 91.9 per cent of the electorate and that 96 per cent of the vote was in favour of the Constitution. Therefore, critics charge that the referendum was rigged and that the Constitution should not be viewed as legitimate.

B. Respect of human rights and humanitarian law in the conflict

41. As it is a case of non-international, internal armed conflict, both opposition groups and the Government of the Sudan should be governed by common article 3 of the Geneva Conventions, which provides that "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex ...". Moreover, in its resolution 2444 (XXIII) on respect for human rights in armed conflicts, the United Nations General Assembly, expressly recognized the principle of civilian immunity and affirmed that "it is prohibited to launch attacks against civilian populations as such". In addition, customary international law and international humanitarian law prohibits indiscriminate attacks against civilian populations, starvation of civilians as a method of combat, and the pillage and destruction of civilian property.

42. Although it is difficult to establish the exact number, approximately 1.9 million people are believed to have died in southern and central Sudan as a result of the war, now entering upon its sixteenth year. In the first six months of 1998 alone, several thousand people were reported killed. Furthermore, 4.5 million people, one out of every five of the country's total population, have been displaced at least once since the beginning of the war in 1983. Many lack the land or dependable security to farm, malnutrition and disease are rampant and relief efforts to many

locations are impeded. According to a World Food Programme mid-1998 assessment, out of a total population of 27 million, there were 2.6 million people at risk of starvation in the Sudan, 2.4 million of them in southern Sudan, not counting the estimated 100,000 people isolated and unassisted in SPLA-held areas of the Nuba Mountains.

43. In addition to the displaced inside the Sudan, approximately 360,000 Sudanese are refugees in six neighbouring countries, having fled the violence in southern Sudan. Additional large numbers of Sudanese have left the Sudan and reside in countries such as Egypt, albeit without formal refugee status.

44. During his mission, the Special Rapporteur held numerous consultations with national and international organizations, Government of the Sudan officials, the SPLM/A and with individual experts. He received well-documented information, often from first-hand sources, pointing to the perpetration of massive and systematic violations of human rights and international humanitarian law by all parties to the conflict in southern Sudan, of which innocent civilians constitute the principle target and the famine is one of the direct by-products, in the context of which food is manipulated as a weapon of war.

45. The Special Rapporteur visited two towns in southern Sudan, Wau and Juba, and the humanitarian relief airbase of Lokichoggio in Kenya. In Lokichoggio, the Special Rapporteur had meetings with the OLS Humanitarian Principles Unit, other United Nations agencies and NGOs participating in the OLS consortium. From there he went to the SPLA controlled territory in the south of the Sudan, accompanied by Operation Lifeline Sudan (OLS). He visited the site of the Nuer-Dinka reconciliation conference at Medar in Tonj county.

1. Bahr-el-Ghazal: human rights abuses, displacements and famine

46. On 18 and 19 February 1999, the Special Rapporteur visited Wau, the capital of Bahr-el-Ghazal State, where he held meetings with the Governor and other officials, Muslim and Christian religious leaders and locally posted United Nations and NGO representatives working with the OLS consortium.

47. The religious leaders emphasized the peaceful co-existence of the two communities, but with the other two groups focused on the tragic events in January/February 1998 that set the stage in Bahr-el-Ghazal for the worst humanitarian crisis culminating in the deadliest famine since 1988, when an estimated 250,000 people were killed, and in massive population displacement. The key single incident that triggered the events occurred on 29 January 1998, when former rebel commander Kerubino Kuan Bol unexpectedly rejoined the SPLA and attempted unsuccebsfully to capture Wau and two other garrison towns, unleashing a wave a reprisals against the civilian population.

48. Although the Wau authorities told the Special Rapporteur that only 31 civilians were killed in the ensuing 10-day violence, according to a United Nations on-the-spot investigation and other reliable reports, at least 600 Dinka and Jur men, women and children were killed by a combination of Government military, local Fertiit militia and mujahedeen. Witnesses saw

hundreds of bodies on the streets and corpses piled on lorries being taken to common graves or being dumped into the Jur river. Tens of thousands more, fearing persecution, escaped to rural areas controlled by the SPLA, where famine was already predicted.

49. A recently-published report by a well-known human rights organization very aptly analyses the root causes of the 1998 famine in Bahr-el-Ghazal. The following excerpts unreservedly reflect the Special Rapporteur's own conclusions: "A two-year drought caused by El Niño provided the natural conditions ... but ... systematic human rights abuses were the direct cause of the famine in Bahr-el-Ghazal." The famine in Bahr-el-Ghazal affected and continues to stalk approximately 1 million people, a majority of them Dinka belonging to the largest ethnic group in the Sudan. "It is fair to conclude that, but for these human rights abuses, there would have been no famine in the Sudan in 1998."

50. According to the same source, the principal abuses are: years of successive cattle stealing, looting of grain, burning of crops and homes, killing of civilians, and abduction of women and children as war booty by government-backed muraheleen militia (believed to be a central part of the Government's counter-insurgency strategy); raiding and looting of Bahr-el-Ghazal civilians' homes by Kerubino (a Dinka himself) during his four-year alliance with the Government; chain of events set off in January/February 1998 by Kerubino in Wau, described above; and, in April 1998, his looting of Baggara cattle and killing of civilians; major attacks on civilians, including raids and bombings, between April and July 1998 by combined contingents of regular army, muraheleen and Popular Defence Forces (PDF), carried out with renewed viciousness, partly in retaliation for Kerubino's April 1998 raids, in a scorched-earth operation entailing the killing of civilians, the abduction of thousands of women and children, the destruction of crops and the looting of tens of thousands of cattle.

51. Last but not least, on 4 February 1998 the Government of the Sudan imposed a ban on all relief flights into the rebel-held territory of Bahr-el-Ghazal which essentially lasted until 31 March, severely hampering the OLS cross-border operation intended to provide emergency assistance to the approximately 100,000 civilians who had escaped the slaughter in Wau. This incident has been perceived as a clear case of using starvation of the civilian population as a method of combat.

52. Bahr-el-Ghazal is inextricably linked with the military supply train (also referred to as the "slave train"), which is escorted by the government-armed muraheleen militia on horseback, who wreak havoc and destruction among the Dinka civilian population along the rail lines. The passage of the last train in January/February 1999 was reported to have caused major disruption as the muraheleen looted two air strips used for dropping food. The muraheleen incursions in general - whether carried out in conjunction with the train or not - constitute a major factor terrorizing the population, jeopardizing its survival capacity and causing major displacement of people. According to a food needs assessment for Aweil East county established by WFP in December 1998, attacks by PDF and muraheleen militia were a major cause of poor food security, affecting some 20 to 30 per cent of

communities. In the attacks, carried out during the cultivation season, crops were destroyed, cattle looted and people displaced to areas where food security was already at risk.

53. Moreover, since the beginning of 1999, militia raids have forced one international NGO to displace its staff at least a dozen times, to halt operations in 5 sites out of 10 in Bahr-el-Ghazal and one in Jonglei, and to evacuate 40 foreign aid workers. The worst incident occurred on 29 January when 60 militiamen on horseback attacked the village of Bararud, north of Wau, killing 10 civilians, including one of the NGO employees, destroying agency shelters and looting medicine.

54. In discussions with the Governor of Wau about the situation described above, he acknowledged the negative role of the Muraheleen militia and the fact that they act under the control of the central Government. The only measure available to the Governor is to disarm the militia when they come within his jurisdiction. He informed the Special Rapporteur that he had acted accordingly during the most recent presence of the Muraheleen in the town of Wau, thereby curbing, to some extent at least, their habitual violations.

55. Many of the displaced people who fled the violence in January/February 1998 have returned; others continue to trickle in from outlying areas. IDPs arriving or returning from rebel-controlled areas reported that the SPLA had deprived them of food, which was distributed to the rebel army instead. However, a joint United Nations/SPLA investigation revealed that local chiefs had actually played a larger role in diverting food than had been played by SPLA soldiers. Moreover, attacks by dissident or uncontrolled local commanders prevented the delivery of food and provoked the displacement of populations away from centres of international emergency supply distribution.

56. At present, Wau is estimated to have a population of between 120,000 and 150,000 people, including some 46,000 IDPs. Of these, 15,000 have been accommodated in two camps located on the eastern bank of the river, which are administered by the United Nations and NGO OLS team. An estimated 5,000 others are stranded in the streets around the market place, living under trees and verandahs, waiting to be resettled by the Government on a more permanent site. However, the envisaged location, near the railway and in the proximity of a military camp, is being contested on security grounds.

57. Although the situation in Wau is comparatively calm, gunshots still ring out during the night. In addition to the regular army, Wau is teeming with all types of security and armed forces, not all necessarily under the control of the Governor. The 6 p.m. daily curfew imposed on the United Nations and NGO staff prevents them monitoring the situation during the curfew hours. The security forces controlling the bridge leading to and from the camps abusively impose a tax on IDPs, especially women going to the market to sell firewood and other goods. Many are not allowed to return unless they pay a further tax. Wau was described as a "big prison", where movement in and out as well as inside the city is severely restricted.

58. As illustrated by the situation in Bahr-el-Ghazal in 1998 the food supply scales are dangerously tipped with every mass population displacement. Thanks to the efforts of the humanitarian organizations, the reprieve due to the successive series of ceasefires (the current one should last until 15 April 1999) and improved government cooperation, facilitating food aid deliveries, the situation has vastly improved and has been brought under control. However, a new emergency may be looming, in view of the poor harvest in 1998 and considering that the situation in the region continues to be volatile as the theatre of structural and physical violence against civilians.

The Babanusa-Wau train and the abduction of women and children: the question of slavery

59. Throughout 1998, numerous reports were sent to the Special Rapporteur regarding the continuing capture of women and children in southern Sudan, allegedly for the purpose of reducing them to slavery.

60. The detailed nature of the reports and information brought to the attention of the Special Rapporteur during the mission enabled him to examine slavery-related allegations in the light of the human rights abuses being perpetrated in the context of the conflict.

61. As already mentioned, raids by the militia are a major source of violations of human rights. In Bahr-al-Ghazal, the Murahaleen militia (or the Mujahideen) often accompany the State-owned military supply train escorted by the Popular Defence Forces (PDF), which travels slowly down to Wau and from Wau back to Babanusa. According to consistent and reliable sources, the Murahaleen ride on horseback along both sides of the railroad tracks, fanning out within a radius of up to 50 km, and systematically raid villages, torch houses, steal cattle, kill men and capture women and children as war booty. Often, abducted women and children are taken up to the north and remain in the possession of the captors or other persons. The PDF are also said to take part in the raids.

62. Allegedly, such raids occur more frequently during the dry season, from November to April. They follow an age-old pattern of rivalry and confrontation between the local Dinka and northern Arab nomads (belonging to the Baggara and Misseriya peoples) over grazing land and water. During fighting, both sides traditionally captured prisoners whom they reduced to slavery unless or until they were redeemed through ransom. Since the beginning of the civil war, these dying practices have been revived, allegedly with the - at least tacit - consent of the Sudanese authorities.

63. NGO reports communicated to the Special Rapporteur contain lengthy and detailed testimonies of men, women and children abducted in similar circumstances, who regained freedom only by escaping or through ransom. The captors are often referred to as PDF, Murahaleen militia, or sometimes even as soldiers. It is therefore difficult to establish whether regular troops also take part in the raids. According to certain accounts, the perpetrators were said to be wearing uniforms; whereas muraheleen and other militia usually wear plain clothes. Although an auxiliary force, the PDF are directly under the control of the Sudanese authorities.

64. The testimonies of abducted women and children contain descriptions of the ill-treatment and the forced work to which they were subjected, usually involving cooking, cultivation, tending animals, collecting firewood, washing clothes and other domestic chores. Women's and girls' testimonies cite rape, forced "marriage" and other sexual abuses amounting, in certain cases, to sexual slavery. Many of those who were freed were either pregnant or gave birth to children fathered by their captors.

65. Allegations have been made to the Special Rapporteur that raids on villages are sometimes conducted jointly by militia and regular Sudanese troops. Moreover, the militia are armed by the Sudanese authorities and receive ammunition from the Sudanese Army. Raid preparations are said to follow established patterns, leaving little doubt as to the Murahaleen's intention of capturing women and children for slavery practices.

66. During the mission, the Special Rapporteur was informed that 800 women and 1,500 children were reportedly abducted in the course of 1998 alone. Also in Khartoum, the Special Rapporteur met with members of NGOs involved in tracing and retrieving abducted children and reuniting them with their families, sometimes with the support of the local authorities. Detailed individual case histories of abducted children were provided to the Special Rapporteur.

2. Equatoria

67. Juba in Eastern Equatoria, has been designated as the seat of the Southern States Coordinating Council (SSCC), presided by Dr. Riek Machar. During his visit, on 22 February 1999, the Special Rapporteur was received by the local government authorities, who assured him of their efforts to guarantee basic rights, such as food, water and education, as well as freedom of expression, to all.

68. The Special Rapporteur also met with the United Nations/NGO team stationed in Juba. However, the presence within earshot of security personnel greatly hampered the openness of the discussions. It was pointed out that security and army staff stationed in Juba outnumber the civilian population. Considering its proximity to the Ugandan border and the active SPLA presence in the area, the situation in Juba is reportedly tense and one where fear and suspicion permeate all aspects of daily life.

69. During the mission, reference was made to the support and sanctuary offered in the area by the Government of the Sudan to the Ugandan Lord's Resistance Army (LRA), reputed for abducting and torturing Ugandan children as young as 12 or even younger, who are kept in LRA camps inside the Sudan and used as soldiers or sexual slaves.

70. According to church circles, Eastern Equatoria remains the most volatile area in Equatoria. Insecurity and instability are mainly caused by cattle raiding, inter-factional rivalry and politically motivated fighting, such as the incident which occurred on 10 January 1999 in Chukudum when an SPLA commander was killed and, as a result, the local civilian community was attacked by soldiers loyal to the commander and had to abandon the town. The insecurity along the Kenyan-Sudanese border remains a matter of concern, with

frequent shoot-outs being reported. The repercussions of the above-mentioned Chukudum incident reached Kakuma refugee camp in Kenya, where fighting broke out between the Dinka and Equatoria (Didinka) communities, leaving several refugees dead.

71. The total population in Juba is between 150,000 and 180,000, including 40,000 IDPs. A more serene climate seemed to prevail among the displaced population in Juba as compared with the situation in Wau. There is freedom of movement and long-stayers have witnessed an overall improvement in their situation over the years, including the possibility of working.

72. A considerable number of the displaced arrived from Yei in 1997 when the SPLA gained control of the town. Some were reported to have left in order to protect their women against sexual abuse and other serious violations against civilians committed by SPLA soldiers, including deserters escaping from the war fronts. Similar incidents were reported to have occurred in Central and Western Equatoria. Since then, such behaviour has been condemned by SPLA leaders and similar practices occur with much less frequency. The Special Rapporteur visited two IDP camps and listened to the grievances voiced by community representatives. In both camps, the major grievance expressed related to the scarcity of food and the need and desire for peace.

3. Other internally displaced persons

73. Owing to time constraints, the Special Rapporteur was obliged to cancel his visit to Ad-Dein province in South Darfur state. The visit had originally been scheduled in view of reports concerning the precarious conditions of approximately 74,000 IDPs, mainly Dinka from Bahr-el-Ghazal, who are settled in about 10 camps throughout the province and who are exposed to reprisals by Rezeigat cattle keepers. Historically, relations between the Dinka and Rezeigat (one of several Baggara tribes which share common borders with the Dinka) have been characterized by tribal frictions. Allegedly, relations have worsened as a result of policies supported by the Government in Khartoum which tend to pit the Arab tribes against the Dinka. The majority of the displaced persons are women and children, including a group of over 20 unaccompanied children, some of whom are under 5 years old.

74. As a consequence of the 16-year war, approximately 1.8 million people have migrated to Khartoum. Hundreds of thousands more are displaced in the Nuba Mountains in Southern Kordofan, where they are reportedly concentrated either in government-controlled camps or living in rebel areas with little or no humanitarian access. In September 1998, fighting on the eastern border with Eritrea also caused the displacement of over 55,000 people. As of September 1998, more displacement was caused by government aerial bombing of SPLA-controlled areas in Eastern Equatoria, though figures were not provided to the Special Rapporteur. Since the beginning of 1999, the large-scale conflict occurring in West Darfur has caused the death of over 30 people, the displacement of at least 2,000 families into Al Geneina and the flight of an additional 10,000 across the border into Chad.

75. In the course of 1998, some 150,000 civilians were displaced and at risk of starvation in the oil-rich region of Western Upper Nile, where instability and violence rendered United Nations emergency humanitarian aid deliveries

difficult if not impossible. This area, belonging to the Nuer people, has been the stage of confrontation between two pro-government Nuer leaders, Riek Machar and warlord Paulino Matiep, fighting each other for political and military control of the territory. Both factions have been directly armed by the Government.

76. In Khartoum, the IDP population represent 41 per cent of the capital's total population. The Special Rapporteur and his party were able to visit only one of the camps set up by the Government, where, reportedly, conditions, including primary educational and health facilities, are better than in other makeshift camps. It was, nevertheless, apparent that the displaced have basically been concentrated in an isolated and barren area, removed from any commercial centre offering work opportunities. There is no general relief distribution for the displaced in Khartoum who are considered to be long-stayers, and many complained of insufficient food and clothing. According to reports confirmed by the United Nations, food security in camps such as this one is precarious and malnutrition among children under five ranged from 12 to 24 per cent in 1997-1998.

77. Although a small number of the displaced manage to obtain odd jobs on construction sites or as domestic workers, the majority cannot afford to pay the cost of transportation into town. According to certain accounts, not all of the camp dwellers are war-displaced from the south; some have migrated to Khartoum for economic reasons or for reasons related to drought and deforestation in various areas of the country. As things stand, despite efforts under way to promote income-generating projects, it cannot be said that this population has any real prospects of economic and social integration; hence their fervent desire for peace that would enable them to go back home.

78. The Special Rapporteur was made aware that, as part of a broader urbanization project, the Government has launched a programme to relocate the internally displaced from squatter settlements where living conditions are extremely poor to camps such as the one described above, offering a better infrastructure. According to allegations on the part of certain humanitarian agencies, it would appear that the relocation programme is being implemented through forcible methods, often at gunpoint and before alternative housing and other arrangements are put in place.

79. Of particular concern to the Special Rapporteur was the extremely precarious situation of displaced women and children, in the camps or on city streets. In particular, women lack adequate means of survival for themselves and their children. Many have no choice other than to engage in practices such as beer-brewing (traditional in the south, but strictly forbidden in the north under Shariah law) and prostitution. Displaced southern women charged with these crimes make up 95 per cent of Khartoum's Omdurman Prison population. Another alarming feature is the imprisonment of girls as young as 10, serving sentences for petty crimes, such as theft. The legal situation of these women and girls was examined during the visit to the prison by the Special Rapporteur's team.

80. Tens of thousands of children and adolescents live on the streets in Khartoum. The Special Rapporteur was informed that a large number are girls

between 12 and 16 years of age ensnared in a countrywide child prostitution network. Moreover, a child found running errands alone on a city street can be picked up without parental notification and placed for years in a closed government camp. A number of NGOs have attempted to work with children in this situation, but allegedly progress has been slow owing to government restrictions.

4. Bombing of the civilian population

81. The Special Rapporteur has received numerous reports that the Government of the Sudan has intentionally targeted civilian targets in its aerial bombardments. Between March 1998 and December 1998, four hospitals run by the Norwegian organization Norwegian People's Aid (NPA) were reported to have been bombed over a dozen times. NPA reported a bombing on 5 March of their hospital at Yei that left 16 people dead and 22 wounded; two others on 10 April and 20 July with the latter leaving two persons wounded. On 9 August the hospital at Nimule was bombed and that of Yei again on 23 August. Labone hospital was bombed on 10 September and that of Nimule on 30 September leaving two dead and three wounded.

82. Between September and December 1998 the Yei hospital was reported bombed four times, leaving a total of 7 persons dead, including a child, and 40 injured. Chukudum hospital was bombed on 7 December, but the four bombs did not inflict damage. On 14 December, the town of Narus was hit by 14 bombs. Six people were allegedly killed and 16 wounded. Between 24 and 26 January 1999 the town of Yei was allegedly bombed twice, with bombs exploding near the hospital. Two women and a four-year-old child were reportedly killed. Yei was again attacked on 5 March 1999, reportedly by a single aeroplane which dropped 24 bombs. The hospital run by NPA was allegedly severely damaged and will remain closed for about two months.

83. Indiscriminate bombings of civilian targets have continued until very recently. In January 1999, following aerial bombing from an Antonov aircraft and artillery shelling, several villages in the Menza district in Blue Nile State were reported to have been destroyed. Those identified are Abu Ghadaf, Abu Genger, El Azaza, Matongiya and Mokla. During the course of his mission, the Special Rapporteur received further reports that bombs were dropped in late February on the towns of Yei, Maridi, Narus, Chukudum, Ikotos and others. Many were reportedly killed as a result of these bombardments.

5. Mines

84. Both the Government of the Sudan, despite its signature of the Mine Ban Treaty of 4 December 1997, and the SPLA continue to use landmines, which have been planted around civilian towns and communication roads in the south of the Sudan.

85. The then Department of Humanitarian Affairs (DHA) Mine Clearance and Policy Unit report on the situation of landmines in the Sudan (July 1997) found that the most credible estimate of the number of landmines in the country is in the range of 500,000 to 2 million. The DHA report also found that landmines are causing a great deal of death and dislocation in the Sudan

and that while many areas are secure enough to permit the return and repatriation of internally displaced persons, they remain uninhabitable due to landmines.

86. The matter was discussed with both the Government and the SPLA with a view to the implementation of the international standards. Information was also gathered on the UNICEF/OLS mine action programme for southern Sudan which is supporting the Operation Save Innocent Lives Sudan (OSIL).

87. Since its initiation in September 1997, OSIL has reported locating and destroying 216 AT mines on 236 miles of road, 1,963 AP mines around liberated towns and villages, 1,219 cluster bombs around Yei town and surrounding villages, and 19,521 pieces of unexploded ordinance (UXOs).

6. Types of violations and responsibilities

88. On the basis of the foregoing presentation, the human rights and humanitarian law violations which are being perpetrated during the conflict may be summarized as follows:

(a) Raiding, burning and looting of villages in southern Sudan inhabited mainly by Dinka people, resulting in the indiscriminate killing of innocent civilians and the destruction of the villagers' means of livelihood and survival economy;

(b) Rape and the abduction of women and children as war booty, who are then subjected to forced labour or tragically drawn into slavery or slavery-like conditions; in some cases, children in particular are taken to closed camps;

(c) Reprisals against the unarmed civilian population in response to military attacks;

(d) Systematic aerial bombing of civilian and humanitarian sites, such as hospitals and refugee camps;

(e) Forced population displacement as a consequence of armed attacks, but also as a result of food insecurity, often resulting in the separation of children from their parents and in competition for limited food and aid supplies;

(f) The use of landmines;

(g) The use of child or young soldiers, often with minimum or no training, on the military front;

(h) Overwhelming security control of the population entailing serious restrictions on freedom of movement and freedom of expression;

(i) Obstacles hampering access to the civilian population by humanitarian aid workers and aid delivery.

89. As has been clearly illustrated, all parties to the conflict in southern Sudan utilize strategies that have tragic implications for the security and well-being of the civilian population. To varying degrees, all parties have engaged in and are responsible for some or all of the above-mentioned violations:

The Government of the Sudan directly or indirectly, through, on the one hand, the deployment of its Popular Defence Forces (PDF) and/or muraheleen militia who, as civilians, are not bound by the ceasefire agreements and, on the other hand, by supporting and arming ex-rebel southern military leaders while at the same time fomenting inter-factional fighting;

The mainstream SPLA rebel army, whose strategy and actions have also had a detrimental impact on the civilian population;

Dika warlord Kerubino Kuanyin Bol, who is largely responsible for successive raids and attacks against civilians and for triggering the tragic chain of events in Bahr-el-Ghazal which culminated in the world's worst humanitarian crisis in years;

Various other warlords and ex-rebel military leaders, allied to the Government, who are vying with each other for influence and power at the expense of the civilian population.

C. Women's rights

90. The new Constitution contains some provisions for the equal rights of women with men. However, the Criminal Code of 1991 is still in force and, until it is repealed or amended, women's rights are very seriously curtailed. The Code provides for punishment by whipping and it is alleged that women are particularly targeted as recipients of this type of punishment, administered shortly after sentencing. Several cases have been brought to the attention of the Special Rapporteur of pregnant, sick or old women who have been subjected to whipping and other punishment and who, one year later, are still in need of medical treatment.

91. In addition, the Public Order Law discriminates against women and puts constraints on their public behaviour and dress code. Under the terms of the Personal Affairs Law a girl child can be married at the age of 10 subject to the consent of her guardian. Only the husband can initiate a divorce and adultery is punishable by death for a woman.

92. In the chapter on respect of human rights and humanitarian law during the conflict, several examples have been given of the vulnerability of women in the southern villages or in camps to harassment and abuse.

93. A group of women who are family members of 28 army officers executed summarily in 1990 for allegedly plotting a coup have also been targeted for harassment for their peaceful commemorations of the event. Many of them have been detained a number of times. On 8 January 1999, the Government of the Sudan announced the adoption of a new dress code which requires women to wear clothing compatible with Islamic values. Public order police were to enforce

it. A group of female students were stopped by security forces on a bus for wearing trousers and were sentenced to 15 lashes. During detention they were also subjected to sexual harassment.

94. Many women have been widowed by the war and a large number have been separated from their children, who were abducted during raids or forcibly conscripted. In some cases their children had died of hunger or they have had to give them away to save them from that fate.

95. The Special Rapporteur was very impressed with the far-reaching and exemplary work undertaken by the government-sponsored Sudan National Committee on Traditional Practices (SNCTP), officially established in 1988 with the objective of eradicating harmful practices endangering the health of women and children, chief among them female genital mutilation (FGM). This practice in its extreme form (Pharaonic) is performed on 82 per cent of Sudanese women. Although commonly erroneously attributed to a religious edict, the practice was legally banned in the Sudan in 1946, but the decision was never enforced.

96. SNCTP is working at the grass-roots, national, NGO and educational levels to raise awareness, to modify mentalities and, not least, to launch income-generating projects for circumcisers who rely on that practice for a living. The issue of FGM is openly discussed in the media and positive changes in attitude and behaviour are already apparent in urban and rural communities, where resistance is particularly strong. The work of the SNCTP also extends to southern Sudanese women in camps for the internally displaced, who allegedly adopted the practice when they moved to the north. Moreover, the advocacy and influence of SNCTP are gaining ground in neighbouring countries where FGM is also endemic. However, sustained financial support is sorely needed to ensure the successful continuation of the project.

D. Rights of the child

97. Children in the Sudan are the most vulnerable group and the easiest target for all kinds of violations of human and children's rights. They are the first to die or to suffer from the long-lasting effects of starvation or the disruption of food distribution. Following the February/March 1998 ban on relief flights in Bahr-el-Ghazal, the malnutrition rate among children five years and under soared by 50 per cent. During the crisis, three children were dying each week at a feeding centre run by Médecins sans frontieres in the town of Mapel; the mother of one infant near death was too malnourished herself to produce milk.

98. Thousands, perhaps millions of southern children have been the main victims of the brutal war conducted against the civilian population by government and rebel troops alike. Children have died in droves of famine and many are still suffering from malnutrition. In Bahr-el-Ghazal an unknown number of children have been abducted during raids by Murahaleen militia, in some cases when the latter form the escort for the train to Wau. In the Nuba Mountains, thousands of children are allegedly held in the so-called peace villages, where they are subjected to abuse. In the IDP camps children are often deprived of an education or, when they are given one it is in a language

foreign to them and they have no possibility of studying in their mother tongue. Furthermore, they are forcibly converted to Islam and, if older, they may be recruited into the armed forces.

99. Many children die or are abandoned by their parents during flight. Several displaced women arriving in Wau from Gogrial county in July 1998 had had to abandon their children on the road because they were too weak to continue; others had watched their children die of starvation. As a result of these experiences, a large number of women are reported to be suffering from mental problems.

100. An estimated 4,000 to 5,000 unaccompanied children reside in IDP camps in southern Sudan. In Wau, the Special Rapporteur was informed that the main social problem confronting humanitarian agencies is single-parent families and the increasing number of families headed by children caring for smaller siblings. In a situation of total disruption, the traditional concept of the extended family, which normally functions as a safety-net, is also breaking down. About 16,000 children in Wau were given up for adoption, many by single mothers who could no longer cope in view of their own precarious conditions. A campaign to register unaccompanied children was initiated in November 1998 by the ICRC with a view to tracing and reuniting them with their families who may be staying in a different camp.

101. Children and women in IDP camps are exposed to uncurbed abuses. In Wau, there are persistent rumours that, after curfew hours, military, police and other security personnel go on the rampage and numerous incidents of rape inside the camps have been reported. Just a few days before the Special Rapporteur's visit, a seven-year old rape victim had been taken to the hospital for treatment.

102. Boys, girls and women are the principal targets of the notorious raids carried out by muraheleen militias in conjunction with the military supply train, an issue which has been elaborated on in the previous section. With a view to addressing the specific problems relating to this group of children, UNICEF has included "former abductees" and "abductees" in its categories of children in especially difficult circumstances.

1. Forcible recruitment of children

103. The Special Rapporteur has been informed on various occasions of the forced or voluntary recruitment of minors into the armed forces by both sides. The Government of the Sudan is said to have reduced the number of young children in the army, but there have been allegations of young students being forcibly drafted and sent into combat after only a short period of training. Equally, young boys are reported to have been drafted into the ranks of several rebel factions in the south. In some cases this is attributed to tradition, which puts pressure on young boys to become soldiers - warriors - as soon as they come of age, according to varying initiations. The SPLA has assured the Special Rapporteur that they are deploying efforts to persuade children to stay at home and receive an education but, in some cases, boys who have lost their families find it an advantage to join combatants for food and shelter. The acceptance and signature by many southern factions of the ground rules set out by OLS in 1994 have, however, put pressure on them to apply some

of the principles contained in the Geneva Conventions and the Convention on the Rights of the Child (art. 38), including a lower limit of 15 years for the age of recruitment.

104. The Special Rapporteur also received information that street or vagrant children are often rounded up by the authorities, loaded on trucks and given minimum military training before being sent to the combat zones. An abnormally high number of young southerners are said to have died thus in the fighting. The practice of collecting street children was allegedly a daily and visible occurrence, but was interrupted during the visit of the Special Rapporteur. In Juba, the Special Rapporteur was informed by reliable sources that 11 or 12 year-old children have been seen arriving with military contingents from the north.

105. In recent months, the authorities have introduced a measure which denies the issuance of secondary school certificates to young boys until they report for military service. Without the certificate there can be no further education and sometimes no employment. In October 1998, the Government closed down colleges as part of a mobilization campaign. This triggered a wave of protests among the population which were brutally repressed.

106. The authorities have announced an increase in the number of female students registered in Sudanese universities. According to official figures, female students now constitute 62 per cent of the total student population. While this figure could be interpreted as a positive development for women, certain observers are more inclined to attribute it to a decrease in the number of registered male students. Many young males prefer, reportedly, to forego their university education for fear of forcible conscription and possible death in combat.

107. In 1992, OLS began a programme of reunification of children with their families in the areas controlled by the Southern Sudan Independence Movement (SSIM) and, in 1996, extended it to those controlled by the SPLM. By 1997 a total of 1,601 minors had been reunited with their families. In 1997, UNICEF reached an agreement in principle with the SPLM/A to launch a training programme in child rights for the benefit of military officers. In addition, a demobilization programme for under-age children was started in SSIM and SPLM/A areas. An estimated 325 children have been thus demobilized. These programmes, in order to be fully effective, however, should be accompanied by rehabilitation and reinsertion projects with effective community or school-based psychological components.

E. Other reported violations of human rights

108. During the period under consideration, the Special Rapporteur received a number of communications concerning alleged violations of human rights. In addition, the Special Rapporteur collected first-hand information in the course of his visit to the Sudan. Cases that withstood initial screening were submitted to the Government of the Sudan for comments and, when appropriate, action. A large proportion of the cases submitted related to northern, mostly urban, situations. In order to create improved conditions for effective and timely action, the Special Rapporteur and the Government agreed on the establishment of a swift communication mechanism.

1. Analytical summary of individual cases submitted to the authorities

109. During the course of his mission, the Special Rapporteur submitted to the government authorities a list of allegations received by him during 1998 and in January 1999. This list contained several allegations of death under torture and a significant number of cases of extrajudicial killing and summary execution. There were over 40 reported cases of torture in the period under consideration. A preliminary survey showed that torture and ill-treatment were widespread and systematic. Arbitrary detentions took place in very large numbers and were not all accounted for.

2. Selected cases

110. The Special Rapporteur would like to highlight some cases which illustrate negative trends deserving particular attention. In the presentation of cases, the usual order, beginning with the most serious and proceeding to lesser violations, is therefore not followed. Instead the political significance is emphasized.

(a) Arbitrary detention

111. Human rights defenders were targeted for arrest and detention during the year. Ghazi Suleiman, a prominent lawyer and human rights defender and former head of the Lawyers Alliance for Democracy, was arrested on 20 January 1998. Two hours after his arrest, he was tried by a public order court and was sentenced to five months' imprisonment and a fine of 500,000 Sudanese pounds. A first appeal lodged on the grounds that the arrest was illegal was rejected. A further appeal to the High Court was successful and he was released after a few days in prison.

112. Two women, Nafisa al Miliek and Samira Karar, family members of 2 of the 28 officers executed in 1990 following an attempted coup, were arrested on 22 January 1998 as they were going to meet other families for the ninth anniversary of the event. They were accused of possession of anti-government documents and of disturbing public order, and received a suspended sentence of two months' imprisonment and were fined 100,000 Sudanese pounds.

113. The Special Rapporteur has been able to establish a clear pattern of arrest and detention targeting selected members of the opposition, both religious and secular. Human rights defenders in the Sudan have pointed out to the Special Rapporteur that the number of arbitrary detentions in 1998 was relatively lower than in the previous year, but this was counterbalanced by selective short-term arrests and by more subtle forms of control. In recent months there has been a tendency to subject targeted personalities to detentions of short duration, one or two days, which are repeated over several days or weeks. This is said to have an important psychological impact on the victims and serves as intimidation.

114. On 30 June 1998, on the anniversary of the coming to power of the present Government, President Omar al Bashir signed the new Constitution of the Sudan, adopted by referendum. The same day, the authorities announced that a number of bombs had exploded in Khartoum on 29 and 30 June, while

others had been defused. This was followed by several waves of arrests some of which targeted political personalities who sought to take advantage of the provisions of the new Constitution and exercise their freedom of speech and assembly. They had argued that the new Constitution superseded all other decrees and entailed a de facto lifting of all bans.

115. On 29 June 1998, the day before the signature of the new Constitution, Abdurrahman Abdallah Nugdallah, a prominent leader of the opposition Umma party, and former Minister of Religious Affairs, was arrested, allegedly in connection with the bomb explosions; on 6 July, Sheikh Abdelmahmud Abbu, Secretary-General of the Ansar Movement, main support base of the Umma party, was arrested, also in connection with the bombings. Both were released without charges on 12 October 1998. On 29 July and 1 August, Father Hillary Boma, Father Lino Sebit, and 25 others were also arrested in connection with the bombings.

116. On 30 June 1998 at 10 a.m. 33 political leaders and trade unionists were arrested and detained and interrogated by security forces until 2 a.m. the next morning, allegedly in connection with the bomb explosions in Khartoum. They were released and asked to report back to security headquarters the next day. They were detained again all day and subjected to the same treatment. This obligation to report daily allegedly continued for several weeks until August, when they were released without charges. The group included the former political personalities Adam Musa Madiibo, former Minister of Energy and Mining; Ali Hassa Taj al-Din, a former member of the Council of the Head of State; Fadallah Burma Nassir, former Minister of Defence; Abd al Mahmoud al Haj Salih, former Minister of Justice and Attorney-General; Farouq Ismail, former Governor of the Central Region; Al Fadel Adam; Sulaiman al Khaidir; Abd al Nagi Ahmed, former Governor of Darfur, Hamed al Nil, a lecturer at Quran University.

117. On 6 July 1998, all the members of the Executive Committee of the banned General Union of the Sudanese Workers' Federation were arrested at the Union's offices during a meeting considered legal under the new Constitution.

118. The wave of arbitrary arrests also affected both Christian and Muslim religious leaders. In May, the Catholic Archbishop Gabriel Zubeir, was allegedly detained for several hours. The reason was reported as the desire on the part of the authorities to prevent him from attending peace talks in Nairobi. The arrest of Catholic priests Father Boma and Father Sebit could also be considered part of this trend

119. Arrests of Islamic religious leaders continued throughout 1998 and early 1999. Five imams, Mudathir Mohamed Ismail and Mohamed Abdel Krim, both members of Safar el Hawamil Islamic Party, and imams Rifa't, Khalil and Ali Sayeed, members of the Islamic Liberation Party, were allegedly detained for over six months at Kober prison, accused of challenging the Islamic credentials of National Islamic Front leader Dr. Hassan al Turabi.

120. Adam Ahmed Yusif, Ali Alumda, Bashir Hamid and Mahdi Abdelrahman, leaders of the Ansar sect, who, after a period of detention, had been freed by

a court on 23 August 1998, were arrested again two days later, 25 August, together with Mohamed el Mahdi, imam of Ansar mosque at Omdurman, near Khartoum.

121. In December 1998 and January 1999, a number of Muslim leaders were arrested. Mohamed Abdel Karim El Sheikh, imam of Nur ed Dayim Mosque at El Shagara in Khartoum was detained from 22 December 1998 to 1 January 1999 and rearrested on 3 January and detained again for two days. He was reported to have received threats and asked to abandon his religious duties. El Sheikh Abderrahman al Amin and Abdelrahman Mattar, leaders of the Ansar sect in Singa, Blue Nile province, and members of the Umma party, were arrested on 7 January, during commemorations of a historic Muslim battle organized by the sect.

122. On 26 January 1999, several imams and members of the Ansar sect were arrested during celebrations of the anniversary of the liberation of Khartoum by El Mahdi and of the independence of the Sudan. Imam Sharif al Din and some 40 other persons were arrested by the security forces at the end of prayers at al Mahdi mosque in Omdurman, and several Ansar members and Umma party leaders were allegedly arrested in other parts of Wad Nubawi town in Omdurman.

123. The Sudanese authorities announced in February 1999 that 41 political prisoners had been released and there were, therefore, no political prisoners left in the Sudan. The Special Rapporteur welcomed the announcement but he regrets not having received from the Government any names of people affected by the reported measure. During his mission, the Special Rapporteur was not given any names of political prisoners held currently although allegations were made that there continued to be prisoners of conscience and other political detainees. However, in the eyes of the Special Rapporteur, some detainees whom the Government of the Sudan considers or describes as common offenders could, in reality, be political prisoners.

(b) <u>The military trial of 27 southerners accused of participation in Khartoum bombings</u>

124. Following the announcement of the bomb explosions in Khartoum, a man was shown on Sudanese television confessing to his participation and accusing Abdurrahman Nugdallah and Sheikh Abdelmahmud Abbu of organizing the plot. Later, however, the authorities seemed to change track and look in another direction at another set of people on whom to lay the blame for the alleged bombings. On 29 July 1998, Father Lino Sebit, a Catholic priest from the Archdiocese of Khartoum was arrested and taken to a secret place of detention. On 1 August, Father Hillary Boma, 57 years old, Chancellor of the Archdiocese of Khartoum, was arrested at St. Matthew's Cathedral and held in a secret detention centre. He is a known critic of the Government and was questioned by security forces in the past. He underwent numerous interrogations about the bombings, at times with a gun held against his head. In the following days, another 25 persons were arrested, all southerners, and accused of participating in the bomb explosions. Father Hillary was accused of recruiting them and organizing the plot. The 27 are still officially indicted and facing trial initially by a Special Military Court. Twenty-one of them appeared before the court on 5 October and met with their defence counsel for

the first time on 6 October. They all declared that they had been tortured and that their confessions had been extracted from them under duress.

125. The 21 are presently detained in the military headquarters in Khartoum, whilst 6 persons are being tried in absentia. The Special Rapporteur obtained very precise information pertaining to the identity of three members of the group, who were reported to have died in custody as a result of torture. Their bodies were allegedly concealed. With the cooperation of the Advisory Council for Human Rights of the Ministry of Justice, the Special Rapporteur was able to interview the remaining 21 who are standing trial.

126. In spite of the Government's claims that all political detainees in the Sudan have been released, this case bears all the features of a political trial. The accused are southerners, mostly Christian, and the best known of them, Father Hillary Boma, a priest, is an outspoken opponent of the regime.

127. This trial was marred by irregularities and lack of due process of law at the time of arrest and during detention. All the detainees interviewed by the Special Rapporteur had been subjected to ill-treatment and most bore marks of severe torture, of which the Special Rapporteur took photographic evidence. They were brought to trial before the military court on the basis of confessions made under duress and of video evidence extracted from them at gunpoint. They had access to the defence counsel of their choice on 6 October 1998, more than two months after their arrest and one day after the trial had begun. All detainees had been medically cleared and declared fit to stand trial. The medical report contained no record of torture or ill-treatment and, although the defendants complained of torture before the court, no investigation was initiated.

128. At a meeting with the Rapporteur of the Advisory Council for Human Rights at the end of his stay in Khartoum, the Special Rapporteur received from him the official position of the Government on several human rights issues. On torture the position was:

> "The Government has given [the Special Rapporteur] the opportunity to interview any person who alleges to be a victim of torture by government agents. And the Government has explained to the Special Rapporteur that effective local legal remedies are available to such alleged victims and that the best way for addressing those allegations is to file proper legal complaints. And that if the victims are not satisfied with the ruling on those complaints they can appeal those rulings to the highest judicial authorities in the country by themselves, or through their defence lawyers. And undoubtedly they could not argue that they are not taking legal actions because they are afraid of reprisals since they have already complained about the alleged torture to the Special Rapporteur. And before doing so the allegations were widespread all over the international media. Moreover, they have already complained to the military court of first instance about the torture allegations, but the court has ruled, after medical examination, that there is no torture. On the other hand, the accused persons have challenged the law under which that Court was established (Armed Forces Act of 1986) before the new Constitutional Court which suspended the military court immediately. And therefore, they could have, and still have, the

opportunity to challenge the ruling on torture of the military court of first instance before the Constitutional Court. But they are declining to do so without giving any reasonable explanations and logically that would, at least, cast doubts on those allegations."

129. The Sudan has signed but not yet ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As such, treaty law dictates that the Sudan may not defeat the purposes of the treaty. The Special Rapporteur would like to draw the attention of the Government of the Sudan to article 13, which provides:

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

130. Further, article 15 of the Convention against Torture provides that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". The failure of the Government to investigate adequately the complaints made by these defendants and admitting the confessions extracted by torture as evidence is clearly contrary to the purposes of the Convention against Torture.

131. The trial was suspended on 6 January 1999 as the court's jurisdiction over civilians is being challenged under the new Constitution. In the meantime, the conditions of detention for these detainees are poor, with two groups of 10 people being crammed into small cells whilst one person, Father Hillary Boma, has been kept in solitary confinement for several months. The detainees are not allowed any visits, they receive no medical treatment and their supply of food and drink is reportedly inadequate.

132. The Special Rapporteur wishes to place on record the cooperation of the Rapporteur of the Advisory Council for Human Rights in making it possible for him to meet with the entire group of detainees in this significant case.

133. The Special Rapporteur conveyed his concerns about the conditions in which the detainees were being kept to the Rapporteur of the Advisory Council for Human Rights, who immediately transmitted to the relevant authorities his request for the transfer of the detainees from the military headquarters to a regular prison, the improvement of their food rations, proper medical care for them and the possibility of receiving visits. The Special Rapporteur hopes that the Sudanese authorities will sustain their cooperation and he will continue to monitor the case closely.

(c) Torture and extrajudicial killings

134. The preceding case reveals an alarming pattern of torture. During his mission the Special Rapporteur was able to verify, or obtain corroboration of,

allegations of torture and other cruel, inhuman or degrading treatment or punishment. He has become convinced that torture is practised widely by the security forces in most cases of detention. In addition, the Special Rapporteur has been made aware of the brutality to which southern Sudanese are subjected at the hands of the security forces.

135. As pointed out above, the Special Rapporteur obtained the identity of three of the missing members of the group of 27 southerners in the Boma-Sebit case who were reported to have died under torture: Abdallah Shol, a Dinka approximately 35 years old; Mohammed Issa, a Nubian, aged 33 or 35; and Galdino Sami Okenny, 48 years old. The first two were reported to have died on 3 July 1998 and the latter on 2 August 1998. They, like the others, had been tied to an iron bed and beaten with whips, plastic pipes and other blunt objects.

136. Mohamed Abdesalam Babiker, a fourth-year law student and a member of the Democratic Front was reportedly arrested on 4 August 1998 by units of the Popular Defence Forces and the Forces for the Defence of Belief and the State. He died under torture. The autopsy performed on his body showed that he had suffered a brain haemorrhage resulting from repeated beatings to the head. The security agents who had arrested him were identified as Ammar Bashari, Ramadan Musa Dirar and Ammar Mubarak. The torture was allegedly supervised by an officer identified as Abdelgaffar el-Sharif. The Special Rapporteur sent a request to the Sudanese authorities that they inquire into allegations of harassment of Mohamed Abdesalam's family. Security officers allegedly visited the family on several occasions to try and persuade them to drop a legal action that they had brought to investigate the student's death. In a letter dated 15 January 1999, the Permanent Representative of the Sudan to the United Nations, Dr. Ibrahim Mirghani, conveyed to the Special Rapporteur information given to him by the Advisory Council for Human Rights. He informed the Special Rapporteur that a body identified as that of Mohammed Abdel Salam Babiker was discovered on 4 August 1998. Following the discovery, and after inquiries, a case of suspected murder was opened in accordance with article 130 of the Sudanese Criminal Act of 1991 against unknown culprit(s). The letter, however, did not deal with the subject of the Special Rapporteur's request, which was the harassment of Babiker's family.

137. Khalid al Taher, Mustafa, a 25-year-old student at Omdurman Ahlia University and a member of the New Forces Movement, was arrested on 12 November 1998 outside the university building and was allegedly driven to a hostel at Abu Kaduk, Omdurman. There he was kicked, given electric shocks, his eyes were gouged with wire, his face scratched with a blade and on his back a slogan was tattooed. He was reportedly released the same evening. Mohamed Ahmed el Nour, aged 29, and Muawia Bushra, 25, both students at the University of Juba Faculty of Animal Resources, and both members of the Democratic Front, were taken forcibly from the university on the afternoon of 1 December 1998 and were allegedly blindfolded and driven to a building of the Sudanese Students Union at al-Murghan, where they were beaten with water hoses, iron rods and the butt of a shotgun. Mohamed el-Nour was also burned on the back. They were both allegedly released the following day.

138. Scores of students are reported to have been arrested during 1998 and 1999. They were often ill-treated or tortured at various secret locations

and released the same day. These arrests and short detentions with ill-treatment and torture are said to be perpetrated by student militia close to the NIF:

> Ismail Ibrahim Babiker, a 21-year-old student at Juba University and a member of the Democratic Front, was taken by force from the faculty building on 1 December 1998 at 4 p.m. and taken blindfolded to the Sudanese Students Union building at al-Murghan where he was beaten with a water hose and the butt of a shotgun. He was verbally abused and threatened with rape and death. He was released the following day.
>
> On 21 March 1999, two students were allegedly abducted and tortured for several hours by NIF student militia under the protection of the security forces. Adam Issa Mohamed, an economics student at Omdurman Islamic University and a member of the student branch of the Ansar sect, was allegedly abducted by eight members of the security forces and student militia from the university. He was reported to have been taken to a building behind the Mortgage Bank in Omdurman, where he was tortured. His toenails were allegedly pulled out, his beard and moustache and half his head were shaven, his thighs were burned by setting on fire a chemical rubbed on them. He was found unconscious in the street later in the day.
>
> Ahmed Izzeldeen, a law student at the Omdurman Islamic University and also a member of the student branch of Ansar, was allegedly abducted by 18 members of the security forces and student militia at 2 p.m. He was said to have been blindfolded and taken to an unknown destination, believed by him to be west of Omdurman in the desert, and was ill-treated and tortured. He was allegedly photographed naked, had his toenails removed, his beard and moustache and half his head shaven, and his thighs burned by lighting a chemical rubbed on them. He was reportedly left unconscious near a sewage pipe in the Kafoury area in Khartoum North.

139. In another case, the Special Rapporteur interviewed personally the victim, a member of the military whose identity the Special Rapporteur wishes to keep secret. He was arrested by the Military Intelligence for losing a piece of equipment belonging to one of his colleagues. He was interrogated at the military barracks and when he protested his innocence he was tortured by the arresting officer and 13 other soldiers. He was kicked, hit with ropes and burned on the shoulder with a hot iron. The wound was poked with a steel bar. Sheets of nylon were put on his back and ironed out with the hot iron.

140. These cases illustrate a widespread practice which has continued in spite of the introduction of the new Constitution. However, according to various sources in Khartoum, in recent months members of the Sudanese elite have been spared and most victims of torture have tended be rank and file activists or students.

141. In September 1998, Mohammed Mustafa, Awad Ibrahim Awad, Mohamed Nourain, Mohamed Rostum, Abdelrahim (no other name available), Osama (no other name

available), were allegedly arrested by the security forces in Adaryeil and charged with collaborating with the SPLA and the Israeli Mossad. They were later reported to have died under torture.

142. On 1 September 1998, Hassan Hafiz Ibrahim, a 73-year-old man, was stopped in Khartoum by a security patrol and asked to produce his identity documents. Unable to show them, he was beaten by security officers and died.

143. Civilians have not only been killed during raids and random attacks, but individuals have sometimes been targeted specifically. On 6 March 1998, government troops allegedly set an ambush near the villages of Kadoro and Locholo in Heiban county in the Nuba Mountains. Ali Abdel Rahman, 36 years old, and his wife Awatif, 29 years old, both from the Layra tribe, were killed on the road between the two villages by units of the Popular Defence Force.

144. Simon Noah, a coordinator of a human rights programme on the Sudan for the non-governmental organization InterAfrica Group, was killed when he fell into an ambush set by government forces on 13 April 1998.

(d) Freedom of religion and belief. Persecution of non-Muslims

145. Fekki Kuku Hassan, a primary school teacher from the Nuba Mountains, was arrested for the crime of apostasy and is currently held at Omdurman prison. His parents were animists and he was converted to Islam at school. In March 1998, on a tip-off from a neighbour who did not see him at the mosque, he was taken to the Islamic Faith Research Centre where he was held in solitary confinement. He is in serious condition and, according to a medical report dated 2 September 1998, has both heart and brain disease and is in urgent need of an operation. His defence counsel referred his case to the Minister of Justice in September 1998, but there has been no response. His counsel requests prompt hospitalization, and a speedy trial or dismissal of the case.

146. Nasser Hassan Sulayman, born in Marawi, North Sudan, converted to Christianity and, since 1992, has been subjected to several arbitrary arrests and periods of detention accompanied by ill-treatment and torture. He has never been allowed visits by his family or a lawyer and has never been brought before a magistrate.

3. Visits to prisons

147. During his visits to Sudanese prisons, the Special Rapporteur became aware of the high number of prisoners on death row. In Juba alone, out of 209 detainees, 11 men and 2 women were awaiting capital punishment, a ratio considered unbalanced by the Special Rapporteur.

148. Many of the detainees and prisoners interviewed by the Special Rapporteur had not had proper legal representation and, in some cases, had only had summary trials. At a meeting with the Legal Aid Council of the Ministry of Justice the Special Rapporteur was briefed on the serious economic constraints faced by this body, whose activities are currently limited to Khartoum. People arrested in other parts of the country can only, at present, have access to legal counsel if they have the means to pay for it.

149. A very large number of the inmates of Kober prison claimed that they had been detained for not being able to pay blood money. After being convicted of a murder, they had been sentenced to pay compensation to the families of their victims. Because of their inability to produce the relatively large sum, they had been sent to prison, where they were expected to remain until the payment was made by them or by a third party. Failure to pay entailed an indefinite prison sentence. Many of them claimed that they had been in Kober for seven or eight years.

150. In the women's prison of Omdurman some of the inmates interviewed were girls as young as 10 and 13 who had been sentenced to three years for theft-related crimes. The 10-year-old girl did not seem to be aware of what a lawyer and a court were. These children were reportedly at Omdurman prison because of overcrowding in the Khartoum reformatory and they had no access to education facilities. The Special Rapporteur regrets not having been able to explore further the issue of juvenile justice in the Sudan.

151. Most of the inmates at the Omdurman prison were internally displaced women from southern Sudan, charged with minor offences such as brewing traditional alcohol, an act illegal in northern Sudan. While in detention, many women were separated from their children, who were left unattended in the camps. One woman who was facing the death penalty for killing a man maintained that she had acted in self defence. The man had allegedly broken into her house in the early hours of the morning while her husband was away and she was alone with her child. On humanitarian grounds, the Special Rapporteur requested the Advisory Council on Human Rights to follow the case attentively as it went through appeal.

VI. CONCLUSIONS

152. The Special Rapporteur was encouraged by the support given by the Sudanese authorities to his mission and by the frank and open dialogue that was established on human rights issues. In this regard, he is particularly thankful to the Government for its willingness and support in allowing him to travel to SPLA controlled areas in the south.

153. The Special Rapporteur attaches the highest importance to the stated will of the Government to bring early peace to the country and to promote the transition to democracy. These two objectives are not only intertwined, they must also go hand in hand with the promotion and protection of human rights. Though at times critical of the Government, this report and its conclusions must be understood in the light of such objectives, in keeping with aspirations of all segments of Sudanese society. The peace process under way should also aim at clarifying fundamental issues related to human rights, such as the relation between the State and religion, and the nature of the institutional framework of south Sudan.

A. Conclusions with regard to the Constitution and the transition to democracy

154. Perhaps the most important legal and institutional development in the past year has been the adoption of the new Constitution and the registration of political parties. Further, according to many observers,

these developments have taken place in a context in which relatively greater political expression is being tolerated and more political debate is taking place. In particular, there are greater press freedoms than in past years, with a spirited political debate taking place in the newspapers.

155. Nevertheless, shortcomings were brought to the attention of the Special Rapporteur during the course of his mission. First, the new Constitution is not the product of a political consensus among the main political parties in the country and, moreover, that the procedure leading to its adoption was highly questionable. Without prejudging such issues nor the underlying political motivations, the Special Rapporteur believes that the Bill of Rights enshrined in the new Constitution should nevertheless be interpreted as a positive step, provided that it is accompanied by energetic legal and political measures, ensuring that the transition from a de facto emergency regime to a more open and democratic system based on the rule of law. The compatibility of the implementing legislation to be adopted with the international instruments ratified should be taken as an indication of the Government's goodwill. In this context, the independence of the judiciary will constitute an element of fundamental importance.

156. It is regrettable that the period following the adoption of the Constitution was overshadowed by the violation of political freedoms and the perpetration of human rights abuses such as, inter alia, the harassment and/or arbitrary arrest of human rights advocates and political, religious and student leaders. Too frequently, torture was inflicted on victims and arrests were conducted without due process of law. In the opinion of the Special Rapporteur, such abuses at this particular juncture can only undermine confidence in the Government's intentions to introduce genuine legal reforms and override other more positive, though still fragile, developments such as the possibility of an open political debate in general and greater freedom of press in particular, which the Special Rapporteur welcomed as positive signs.

157. Information was provided to the Special Rapporteur indicating that, in the context of the emergency legislation enacted in the early 1990s which is still in force, exceptional powers were extended to the executive branch in derogation of human rights standards. Such powers bestow on various security organs a degree of immunity tantamount to impunity. In the light of the above and based on corroborated evidence made available to him, the Special Rapporteur believes that the security organs are directly responsible for a significant number of violations. In addition, their generalized and visible presence creates a climate of fear and intimidation designed to exert control over the population. Considering the foregoing, the Special Rapporteur was particularly encouraged by the Government's assertion that the Security Act, as well as other emergency laws, is at present being revised in conformity with the new Constitution. The Special Rapporteur trusts that the new legislation will ensure that the executive and the various security organs will come under jurisdictional control.

158. In summary, adopting a Constitution is not a panacea in itself. The Government of the Sudan hails the Constitution as a major step towards democratization and improved respect for human rights. A number of incidents limiting fundamental rights and freedoms that took place in 1998 overshadowed the positive achievements linked to the enactment of the Constitution.

B. Respect of human rights and humanitarian law in the conflict

159. The prolonged war in the Sudan affects mainly the civilian population, whose plight should be regarded as one of the most important human rights concerns facing the international community. Although of rather low intensity, the war has a disproportionally high impact on the civilian population, in particular women and children, who become hostages and/or targets of the belligerents. Consistent and undisputed evidence indicates that the war is being conducted in disregard of human rights and humanitarian law principles, and that violations are perpetrated by all parties, albeit with varying degrees of responsibility, the greater portion being attributable to the Government. Grave concern was also expressed in different quarters about the behaviour of the SPLA and factional leaders, such as Kerubino Kuanyin Bo and Paulino Matiep.

160. The Special Rapporteur categorically rejects the view, frequently expressed, that "war is war" and that "human rights are a post-conflict concern". On the contrary, taking into account the suffering of the population and the uncertainty surrounding the duration of the peace process, the Special Rapporteur firmly believes that respect of human rights and humanitarian law principles during the conflict must be regarded as a basic component of the strategy for solving the conflict itself.

161. The violations of human rights and humanitarian law by the parties to the conflict have had a number of tragic human consequences, such as forced displacement, killings, rape and abduction of women and children, and slavery. The famine, which killed hundreds of thousands in 1988, was triggered and exacerbated by a long series of acts rooted in human rights violations and abuses which are described above in chapter V of the present report. During the Special Rapporteur's visit to the area, he was relieved to learn that the situation had substantially improved, essentially as a result of the intensive efforts of United Nations agencies and NGOs working under the umbrella of OLS, whose work was also facilitated by a series of partial ceasefires. In addition, greater and easier access to the needy population was granted by the Government. However, the situation remains extremely fragile because several years of war have eroded the social and economic infrastructure, creating the preconditions for cyclical hunger and precarious health conditions. During the mission, grave concern was expressed about the recurrence of human rights violations that could endanger the security situation and undermine the current stability.

162. The Special Rapporteur was nevertheless encouraged by the following developments and initiatives promoting the respect of human rights and humanitarian law during the conflict, the construction of peace at various levels, the improvement of humanitarian assistance, post-conflict national development and confidence-building:

The formidable humanitarian work undertaken by OLS in frequently adverse circumstances and, in particular, its creative and active approach to ensuring the respect of humanitarian principles;

The two agreements signed in Rome on 18 November 1998 between the Government of the Sudan, the SPLA and the United Nations

guaranteeing the safety of relief workers and the provision of safe corridors in the war zones in southern Sudan for the transportation of relief aid;

The relentless work of United Nations agencies and NGOs with a view to protecting and assisting vulnerable groups such as children, women, IDPs and refugees;

The ICRC initiative to promote greater awareness of humanitarian law principles and to provide relevant training to both parties to the conflict;

The various initiatives undertaken by the United Nations Development Programme with a view to promoting a broad dialogue on sustainable human development in the Sudan and, in cooperation with other United Nations partners, to identifying the necessary measures to strengthen and sustain the country's post-conflict viability;

and, in particular, the following peace-oriented initiatives and developments:

The extension of the ceasefire in Bahr-el-Ghazal until 15 April 1999, signed by both parties to the conflict on 13 January 1999, which needs to be further extended in time and scope;

The Dinka-Nuer West Bank Peace and Reconciliation Conference, held from 27 February to 8 March 1999 in the SPLA-controlled region of Bahr-el-Ghazal, which adopted a covenant heralding the end to over seven years of conflict between the Dinka and Nuer peoples on the West Bank of the Nile and declaring a permanent ceasefire with immediate effect. This groundbreaking event is very likely to generate nationwide repercussions as well as to have a strong positive impact on the IGAD peace process. The Special Rapporteur had the privilege of being present during the preparations for the Conference; his presence was facilitated by the New Sudan Council of Churches;

In Nairobi, the Special Rapporteur was encouraged by his meeting with Sudanese women of various ethnic, religious and political backgrounds who, within their respective organizations and through the implementation of different projects involving and empowering women at the grass-roots level, are making their own valuable contribution towards the common goal of peace-making and building in the Sudan.

C. The human rights situation in general

163. While there have been positive developments during the course of the past year, as outlined in chapter V above, the human rights situation reflected in Commission on Human Rights resolution 1998/67 remains valid. Based upon all the information obtained, including from first-hand sources, it is apparent that serious violations described in prior reports of the Special Rapporteur continue to be committed. These violations include summary executions, extrajudicial killings, arbitrary arrests, detention without due process of law, displacement of persons, systematic torture and restriction or denial of the freedoms of religion, expression, association and

peaceful assembly. The Special Rapporteur would particularly like to highlight the frequent incidents of torture reported during the past year, including cases in which the victim died as a result of the torture; arbitrary arrest and detention without due process; and the overall control and intimidation of the population by the security organs.

D. Slavery

164. The Special Rapporteur firmly believes that there is enough consistent and credible information to ascertain that a pattern of slavery exists in the Sudan. It is an ancient problem which stems from traditional inter-tribal competition for scarce resources. The Special Rapporteur was informed that in the past the problem was solved or mitigated with the use of traditional and customary mechanisms.

165. At present, the problem of slavery is exacerbated by war strategies aimed at controlling territory. In the Bahr-al-Ghazal region, where most of the cases were reported, the problem is partly linked to the supply train which travels slowly south to the town of Wau. The need for protection for the train while it crosses SPLA-held territory has led the Government of the Sudan to allow local militia and units of the Popular Defence Forces (PDF) to escort the train. In return, the militia are allowed to carry out raids on neighbouring villages and to keep the proceeds of looting as payment. The raids are very violent and the militia and PDF perpetrate killings, rape, and abductions of women and children.

166. The women and children thus kidnapped are held until payment of ransom or are kept in conditions amounting to slavery. Furthermore they are often forced to convert to Islam.

167. The Government of the Sudan must honour its obligations under international law and protect all citizens against violations of their fundamental rights. Freedom from slavery is a non-derogable right and slavery is prohibited by a number of international instruments to which the Sudan is a party, in particular, the Slavery Conventions of 1926 and 1956, ILO Conventions Nos. 29 and 105, and the Convention on the Rights of the Child.

E. Field presence

168. During his mission, the Special Rapporteur received repeated requests from groups within civil society, NGOs and national agencies for a human rights field presence inside the Sudan, in accordance with prior resolutions of the Commission. The question was discussed with the Government, which strongly objects to the proposal and would only agree to accept a "very limited field presence" with limited financial assistance for technical cooperation projects. Despite the Government's present position, the Special Rapporteur firmly believes in the benefits and advantages of a human rights field presence for both the Government and the people of the Sudan. The Special Rapporteur believes that the cooperation extended to him during the mission could be further enhanced through a permanent presence.

169. The Special Rapporteur is persuaded that, despite the war situation, the Government of the Sudan has the political, legal and practical means to bring about a radical improvement in the human rights situation. Such improvement will undoubtedly also have a positive impact on the image of the Sudan and increase its chances for greater inter-action with the international community.

170. In this connection, the Special Rapporteur believes that cooperative efforts for the promotion and protection of human rights should also include identification of problems that need to be solved and/or prevented. In this respect, a permanent presence could help to develop a culture of international cooperation and help to overcome the present tendency to deny the existence of the problems.

VII. RECOMMENDATIONS

171. In the light of the present report and the conclusions set out above the Special Rapporteur wishes to formulate the following recommendations.

A. The Constitution and the transition to democracy

172. The Government needs to adopt the legal, political and administrative measures required to ensure the transition from an emergency regime to a political system based on the rule of law, including the following measures:

Previous legal emergency instruments granting exceptional powers to the executive must be repealed. Accordingly, restrictions on political rights should be lifted;

The Constitution should be amended or interpreted in such a way as to ensure full conformity with international human rights instruments to which the Sudan is a party, and the provisions of such instruments should be made enforceable in a court of law;

The independence of the judiciary should be ensured and it should be strengthened;

The role, functions and methodology of the State security and intelligence agencies must be revised in accordance with the requirements of a democratic society, to ensure their control by the judiciary;

Extrajudicial killings, torture and other forms of ill-treatment, and arbitrary arrest must cease immediately, and agents responsible for such activities must be prosecuted and the victims compensated;

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be ratified;

The Government should authorize visits to prisons and detention places by a competent international organization. The United Nations Standard Minimum Rules for the Treatment of Prisoners should be implemented and special consideration should be given to imprisoned women and juveniles

deprived of their liberty. To the extent that the death penalty continues to be applied, the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty must be observed.

173. The international community should lend full support to measures taken by the Government and civil society aimed at a genuine transition towards a democratic and pluralistic society.

B. The respect of human rights and humanitarian law during the armed conflict

174. The Government, the SPLA and any other armed groups involved in the armed conflict should comply fully with the standards set forth in the Geneva Conventions and the applicable international human rights instruments.

175. In particular the Special Rapporteur recommends that:

(a) All parties must ensure that civilian populations, in particular women and children, are not the target of military operations. The following types of operation carried out by regular or irregular armed groups supported by the parties must be banned and transgressors punished:

(i) Raids, burning and looting and physical attacks on the civilian population, including the destruction of their means of livelihood and their survival economy;

(ii) Reprisal against the unarmed population in response to military attacks;

(iii) Forced population displacement and arbitrary or discriminatory restriction of freedom of movement;

(iv) Recruitment of underage child soldiers;

(v) Hampering access to the civilian population by humanitarian aid workers and aid delivery;

(vi) The use of anti-personnel mines; other land mines must be mapped and not affect corridors used for humanitarian relief.

(b) The Government:

(i) Should ensure that raids by Murahaleen or other militia against the civilian population are prohibited and perpetrators of acts against national and international laws are punished;

(ii) Must cease aerial bombing of civilians and humanitarian sites, such as hospitals;

(iii) In order to put an end to slavery-like practices in the Sudan, should take all possible steps to prevent further perpetration of the acts of raiding villages, killing civilians and raping and abducting women and children. The Government of the Sudan must, inter alia:

a. Cease to support the militia or ensure their integration into the regular forces where they should receive basic training in respect of humanitarian law and of minimal rules of conduct in warfare;

b. Prohibit raids against civilians and punish all perpetrators of acts which violate international humanitarian and human rights law;

c. Encourage and support grassroots activities aimed at the release of abducted women and children, and ensure the cooperation of the international community with such activities;

d. Establish a joint Sudanese-international mechanism for the purpose of tracing abducted women and children, ensuring their reunification with their families, and providing them with income-generating activities in order to lower their vulnerability and to prevent their further enslavement;

e. Allow an enquiry into the causes of slavery in order to establish the truth and to ensure eradication of the problem. National and international organizations and specialized agencies could participate and provide resources and expertise.

(c) SPLA/M must:

(i) Honour SPLM/OLS ground rules agreements, in particular, ensuring the passage of humanitarian assistance to the population in need;

(ii) Restrict the current extended military rule over the civilian population.

(d) The international community, in the context of the peace process, should support the promotion of actions such as the Technical Committee for Humanitarian Affairs agreements reached in Rome in November 1998 aimed at improving respect of human rights and humanitarian law during the conflict.

(e) As a contribution to peace and in conformity with international standards, the parties should take measures to demobilize young soldiers. Development projects by United Nations agencies and NGOs to facilitate their reintegration must be promoted and supported by the international community.

C. Prevention of torture

176. In order to ensure the prevention of torture, the Government must take the following steps:

Ensure that detainees are held only in places officially recognized as places of detention and that their names and places of detention are kept in registers readily available and accessible to those concerned, including relatives and friends. Detainees should also be granted immediate access to legal counsel;

Ensure that education and information regarding the prohibition of torture are included in the training of civil or military law enforcement personnel, medical personnel, public officials and other officials who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

Ensure a prompt and impartial investigation when an individual alleges he has been subjected to torture;

Ensure that the victim of an act of torture obtains redress and has an enforceable right to fair trial and adequate compensation, including the means for as full rehabilitation as possible;

Ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

Remove from their posts all law enforcement personnel who have been found to have committed torture, and bring criminal charges against them.

177. In the ongoing trial (see paras. 124-133 above), the confessions extracted under torture should be held to be inadmissible and an impartial investigation should be undertaken to hold the perpetrators accountable.

D. A human rights field presence

178. The Government of the Sudan should consider accepting a United Nations human rights field presence.